**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL CASE No. 7 of 2000**
**In**
**COMPANY PETITION No. 29 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**O.L. OF MOTOROL INDIA LTD. - Complainant(s)**
**Versus**
**SHASHIKANT K. GANDHI & 4 - Accused**

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**Appearance :**
OFFICIAL LIQUIDATOR for Complainant(s) : 1,MS AMEE YAJNIK for Complainant(s) : 1,
Ms. Shanu Pathan for Mr. AM RAVAL for Accused : 1,
MRS SWATI SOPARKAR for Accused : 1 - 5.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 09/02/2007**

**ORAL JUDGMENT**

Present Criminal Case has been filed by the Official Liquidator of M/s. Motorol (India)

Ltd., [in liqn.] under Section 454 of the Companies Act, 1956 to take cognizance of the default committed by the accused punishable under Section 454 of the Companies Act and to issue process against the accused No. 1 to 5, try them and punish them.

2. It is the case on behalf of the Official Liquidator, complainant that M/s. Motorol (India) Ltd., was ordered to be wound up by order dated 19th August 1999 and accused No. 1 to 5 were the Directors on the relevant date who were supposed to file the Statement of Affairs within 21 days of the order of winding up. As the accused No.1 to 5 being ex-Directors of the company [in liqn.] did not file the Statement of Affairs all accused No. 1 to 5 were called upon by notice dated 17.9.1999 to submit the statement of affairs under Section 454 of the Companies Act. It is also the case on behalf of the complainant that despite service of the notice dated 17.9.1999 accused No. 1 to 5 did not submit the statement

of affairs and therefore the present complaint came to be filed. Having served with the summons of this criminal case, it appears that accused filed their statement of affairs on 9.9.2000, however there were certain defects which are also subsequently cured by the accused.

3. Ms. Amee Yagnik, learned advocate appearing for Official Liquidator has submitted that by and large the statement of affairs can be said to have been filed in accordance with law however the Shareholders' Register is not submitted.

4. Shri Soparkar, learned Senior Advocate appearing on behalf of accused No. 1 to 5 has submitted that there is a delay of approximately 365 days caused in filing the statement of affairs, however subsequently the same was subsequently filed on 9.9.2000. It is submitted that so far as shareholders' register is concerned the same was with the Registrar of

Firms which was not traceable and therefore the same is not submitted. Pursuant to the order passed by this Court, the Registrar of Firms is also joined as party respondent who has filed affidavit-in-reply. Shri Soparkar has further submitted that in view of the fact that the statement of affairs have already been filed on 9.9.2000 there is a substantial compliance and therefore requested not to impose any punishment, but impose some penalty on the accused.

5. Heard the learned advocates appearing for the parties. It is not in dispute that M/.s Motorol (India) Ltd., was ordered to be wound up by order dated 19th August 1999 and accused No. 1 to 3 who are Directors and accused No.5 who is Company Secretary on the relevant date were required to submit the statement of affairs within a period of 21 days from the date of order of winding up of the company. It appears that the period of 21 days expired in September 1999 and accused No. 1 to 5 did not file statement of

affairs. It also appears from the record that inspite of service of notice dated 17.9.1999 of the Official Liquidator directing all the accused to submit statement of affairs as required under Section 454 of the Companies Act, the statements of affairs were not filed and they came to be filed for the first time on 9.9.2000. Thus, there is a delay of 365 days in filing the statement of affairs. Now, in view of the fact that the statements of affairs are filed, it can be said that there is substantial compliance. Looking to the conduct of the accused during the trial and considering the facts and circumstances of the case the order of punishment is not required to be passed and it will be suffice to impose penalty only. Shri Soparkar has requested that some reasonable amount of penalty may be imposed on the accused. Considering the facts and circumstances, accused No. 1 to 5 are directed to jointly pay the penalty which is quantified at Rs. 25,000 which the accused are directed to deposit with the Registry of this Court within 3 weeks from today. This Criminal

Case is accordingly disposed. It is, however, made clear that whenever the Official Liquidator seek assistance of the accused, all the accused are directed to cooperate the Official Liquidator. Even otherwise, as required under the provisions of Section 457 of the Companies Act also, all the accused are expected to assist the Official Liquidator as and when called for by him. With these, the present Criminal Case is disposed of.

[ M.R. Shah, J.]

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